

EXHIBIT R

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SENTENCES

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
2-----x

3 UNITED STATES OF AMERICA, New York, N.Y.

4 v. 07 Cr. 0354 (JSR)

5 MONZER AL KASSAR and LUIS
6 FELIPE MORENO GODOY,
6-----
7 Defendants.

7-----x
8 February 24, 2009
9 2:36 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 LEV L. DASSIN
15 Acting United States Attorney for the
Southern District of New York
16 BY: BOYD M. JOHNSON III
BRENDAN McGUIRE
17 Assistant United States Attorneys
DICKSTEIN SHAPIRO LLP
18 Attorneys for Defendant
Monzer al Kassar
19 BY: IRA SORKIN

20 GALLET DREYER & BERKEY, LLP
21 Attorneys for Defendant
Luis Felipe Moreno Godoy
22 BY: ROGER STAVIS

23 - also present -

24 Francisco Olivero
Mario Michelena,
25 Spanish Language Interpreters

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1 THE CLERK: February 24, 2009, United States vs.

2 Monzer al Kassar and Luis Felipe Moreno Godoy.

3 Counsel, please state your name for the record.

4 MR. JOHNSON: Good afternoon. Boyd Johnson and

5 Brendan McGuire for the United States.

6 THE COURT: Good afternoon.

7 MR. SORKIN: Good afternoon, your Honor. For the
8 defendant Monzer al Kassar, from Dickstein Shapiro LLP, by Ira
9 Lee Sorkin.

10 THE COURT: Good afternoon.

11 MR. SORKIN: Good afternoon.

12 MR. STAVIS: Gallet Dreyer & Berkey, by Roger L.
13 Stavis, on behalf of Mr. Moreno Godoy. Good afternoon, your
14 Honor.

15 THE COURT: Good afternoon.

16 All right. We are here for sentence. I think it is
17 important to state the parameters so that everyone understands
18 the situation and then I will hear argument from both sides --
19 from all three sides.

20 There is a mandatory minimum sentence here of 25
21 years. All counsel are agreed that that is binding on the
22 Court and the Court has no discretion to go below 25 years.

23 There is a request that was made in connection with
24 the extradition, really perhaps a condition so far as the
25 government is concerned -- a request made by the Spanish

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1 government that the government would not seek either the death
2 penalty or life imprisonment for Mr. al Kassar. And since
3 Mr. Godoy, on any analysis, is situated below Mr. al Kassar in
4 terms of culpability, that would affect any sentence to be
5 imposed on Mr. Godoy as well.

6 Even assuming that these defendants were to live into
7 their 90s, well beyond what would be the actuarial expectation,
8 the sentence in the Court's view, therefore, could not be more
9 than 35 years without offending the thrust of the Spanish
10 government's request.

11 So I think we are talking, gentlemen, about a sentence
12 no less than 25, no more than 35 years. Of course, if anyone
13 disagrees with me on that, I will be very happy to hear you on
14 that.

15 So let me start by asking Mr. Sorkin whether your
16 client has read and discussed with you the presentence report?

17 MR. SORKIN: He has, your Honor.

18 THE COURT: There are many objections to the report
19 made in your submissions. Do you have any other objections
20 other than the ones, which we will address shortly, that are
21 set forth in your submission?

22 MR. SORKIN: We do not, your Honor.

23 THE COURT: All right. Let me ask Mr. Stavis, has the
24 presentence report been gone over in translation with your
25 client and has he discussed it with you.

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1 MR. STAVIS: Yes, it has been reviewed at length, your
2 Honor, with the assistance of an interpreter, and all of our
3 objections are in our submission we made to the Court.

4 THE COURT: Very good. Any objections from the
5 government to the report?

6 MR. JOHNSON: No, your Honor.

7 THE COURT: All right. So let's start with the
8 calculation of the guidelines, which, of course, are not
9 binding on the Court but which the Court must consider,
10 together with all the other factors under Section 3553(a) of
11 Title 18.

12 The guideline calculation from the probation officer
13 is for life imprisonment. And Mr. al Kassar's counsel raises
14 numerous objections to the calculation, but what I wasn't clear
15 on, Mr. Sorkin, is what would be your calculation of the
16 guidelines?

17 MR. SORKIN: Your Honor, my calculation of the
18 guidelines would be -- obviously, I cannot address the 25-year
19 mandatory minimum. My calculation of the guidelines, your
20 Honor, would not be all of the enhancements.

21 THE COURT: I understand. But what I'm unclear of
22 is -- because the reason I'm raising this is that the
23 guideline, the offense level for this defendant was literally
24 off the chart.

25 MR. SORKIN: Yes.

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1 THE COURT: So even if one were to eliminate certain
2 of the enhancements, he would still face a guideline range of
3 life in prison. And before we go through all the rigmarole of
4 deciding whether or not certain enhancements should apply or
5 should not apply, I need to know whether it makes any
6 difference, because if it doesn't then this is just, you know,
7 lawyer talk.

8 MR. SORKIN: Your Honor, I think it would make a
9 difference with respect to Counts One, Two, Four and Five.

10 THE COURT: So what would be the calculation you
11 would -- what is the guideline range you are asking for? How
12 can I --

13 MR. SORKIN: I think, your Honor -- if your Honor will
14 bear with me, I think the guideline range that I would start
15 with, and I'm looking now at the presentence report, would be
16 the basic -- the 2332(g)(A)(1) and (b)(4) found in Section
17 2K2.1 is a base level of 18 your Honor.

18 THE COURT: OK.

19 MR. SORKIN: That can found, your Honor, at paragraph
20 95, page 23 of the presentence report. Let me see if it is the
21 same corresponding section.

22 THE COURT: OK.

23 (Pause)

24 THE COURT: Yes, we are at 18. Where do you go from
25 there?

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1 MR. SORKIN: 18. And I would add, your Honor, from
2 paragraph 101, three additional points.

3 THE COURT: Looking at that page, page 23, that is
4 probably a good place. The probation officer then adds, after
5 the 18, 10 points because the defendant conspired to sell to
6 the FARC 12,620 weapons and 2 million rounds of ammunition.

7 Are you contesting that?

8 MR. SORKIN: Your Honor, to the extent that I am
9 contesting that with respect to grouping under the missile
10 count, which is what I believe the Probation Department did, I
11 don't contest that the firearms were part of Count One, but the
12 way I understood the Probation Department to be submitting this
13 is that they started out with Count Three and built upon Count
14 Three to arrive at those points. I do not contest --

15 THE COURT: We could discuss all of that. I am happy
16 to take it any way you want. But I don't want to -- my whole
17 point of this when I read through -- and Mr. Stavis has similar
18 arguments in his memo -- it was not clear to me that anything
19 you were suggesting would lead to a different bottom line.

20 I've already indicated that, barring something extraordinary
21 from the government, we are talking of a sentence of between 25
22 and 35 years. Unless the guideline range is below that, then
23 there is no point even worrying about what the guideline range
24 is, assuming arguendo that the probation officer had it wrong.

25 MR. SORKIN: I think the probation officer had it

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1 wrong, your Honor, because I think they double counted. If you
2 take, your Honor --

3 THE COURT: Give me, first --

4 MR. SORKIN: Yes.

5 THE COURT: -- what is it, what offense level do you
6 think should apply?

7 MR. SORKIN: I think 21, your Honor.

8 THE COURT: So you think none of the other
9 enhancements should apply to any count?

10 MR. SORKIN: That is correct, your Honor.

11 THE COURT: OK. And what do you think is the Criminal
12 History Category?

13 MR. SORKIN: I, your Honor.

14 THE COURT: OK.

15 MR. SORKIN: I think we made that clear.

16 THE COURT: So you think the sentence should be 25
17 years because the guideline range under yours would be 37 to 46
18 months?

19 MR. SORKIN: That is correct, your Honor. I think
20 what --

21 THE COURT: Well, that is an interesting suggestion.

22 Now, let's see, then we have to go through this
23 exercise. So why is it you think that the 10 points should not
24 apply, 10 points for the specific offense characteristic?

25 MR. SORKIN: In 97, your Honor?

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1 THE COURT: Yes.

2 MR. SORKIN: Because as I read -- and I may have
3 misread it, as I read that, your Honor, what the Probation
4 Department did was take that 10 points and add it to the
5 missile count, and separately and apart from that, your Honor,
6 the missile count I think was double-counted with respect to
7 the arms, I think it was double-counted with respect to a
8 destructive device, which is paragraph 98, and I think it was
9 double counted --

10 THE COURT: Well, but then if that's true, then the
11 missile count would not be the most serious count, so we would
12 have to use some other count to calculate the guideline range.
13 So what other count would you prefer to use?

14 MR. SORKIN: No, I think you have to start with the
15 missile count, your Honor.

16 THE COURT: Why?

17 MR. SORKIN: The missile count takes its own -- it
18 stands alone, your Honor, and I think what the Probation
19 Department did was take the missile count, your Honor, and add
20 the firearms to the missile count.

21 THE COURT: I thought you made the argument in your
22 memo -- maybe I'm wrong -- that I should calculate
23 separately --

24 MR. SORKIN: Yes.

25 THE COURT: Well, then, let's do it separately. Take

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1 one of your other counts.

2 MR. SORKIN: Count No. One, your Honor.

3 THE COURT: OK. What do you say is the base offense
4 level?

5 MR. SORKIN: May I have just a moment, your Honor?

6 THE COURT: Sure.

7 (Pause)

8 MR. SORKIN: Can I have just one second, your Honor?

9 THE COURT: Sure, take your time.

10 (Pause)

11 MR. SORKIN: Your Honor, I think understand your
12 Honor. If we start with 2A1.5, your Honor, it is 33.

13 THE COURT: OK. And then what would you add to that?

14 MR. SORKIN: I would add only, your Honor, paragraph
15 97, which would leave you 10.

16 THE COURT: So that would be 43.

17 MR. SORKIN: Yes.

18 THE COURT: And 43 at Criminal History Category I is
19 life in prison.

20 MR. SORKIN: Yes, it is, your Honor.

21 THE COURT: This is why I think, most respectfully,
22 that even if I were to agree with the entire approach, that
23 very, very interesting approach that both you presented, it
24 doesn't make a difference, it would still come to life in
25 prison under at least one of these counts that you say should

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1 all be calculated separately, and I'm not going to impose even
2 life imprisonment, but that is the same calculation that the
3 Probation Office came to, albeit from a different method that
4 you say is incorrect.

5 So I think where we are at, and I'll hear anything
6 Mr. Stavis wants to say, because I think we are at -- the
7 calculation of the guidelines is going to be, under one
8 analysis or another, life imprisonment and, on the other hand,
9 it's of secondary relevance in this case.

10 MR. STAVIS: Your Honor.

11 THE COURT: Yes.

12 MR. STAVIS: If you take the base offense level of 33
13 from 2A1.5, and I've asked for a minimal role adjustment of 4,
14 even if you add three, there is 33 plus the three --

15 THE COURT: Ten for selling weapons, yes.

16 MR. STAVIS: But I've objected as a legal matter,
17 not -- I've objected as a legal matter to those enhancements,
18 your Honor.

19 THE COURT: What is the objection -- now, we are not
20 talking about the missile count now. So what is the objection
21 to the enhancement on the non-missile count?

22 MR. STAVIS: Because I believe that it overstates
23 the -- unless we want to deal with this in a 3553 capacity,
24 which I'm sure we'll be doing in another few minutes.

25 THE COURT: Yes, and that's the place to do it. I'm

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1 really trying to figure out whether, as a practical matter,
2 this whole exercise on the calculation of the guidelines is of
3 any real momentary significance, in a sense.

4 But even on your view of it, I think you are still up
5 above 35 years. You might not be up all the way to life in
6 prison.

7 MR. STAVIS: I would be at 33 plus 3 for the 2A1.2
8 enhancement. So that's 33 and 3 is 36, minus 4 is 32, which is
9 121 to 151.

10 THE COURT: Wait a minute. This is premised on my
11 disagreeing with you -- on my agreeing with you on the 10,
12 right?

13 MR. STAVIS: Oh, yes, and not only that but agreeing
14 with me on all of the enhancements, your Honor, yes.

15 THE COURT: But just taking the 10 for a moment, if I
16 didn't -- you're saying that he shouldn't get an increase for
17 conspiring to sell all those weapons because it overstates the
18 seriousness of the offense.

19 MR. STAVIS: Yes. But I have to be clear. The
20 guidelines will say that if it is a guideline of I think I was
21 just at 32, it gets bumped up for the 25-year mandatory
22 minimum.

23 THE COURT: For sure it is.

24 MR. STAVIS: That becomes the guidelines.

25 THE COURT: No. For sure we are at 25, but I am

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1 talking about higher than 25 for the guideline calculation.

2 I do disagree with you that it overstates the
3 seriousness of the offense, so even if I agree with you on
4 everything else, if I just disagreed with you on that one
5 point, we would be up above 35.

6 MR. STAVIS: Yes, your Honor.

7 THE COURT: All right. So I am going to find that the
8 guideline calculation is life imprisonment, whether reached the
9 way the Probation Office reaches this, which I do believe is
10 correct, or, as a practical matter, the way in which Mr. Sorkin
11 would reach it, or, with the one disagreement that I noted on
12 the record, with the way Mr. Stavis would reach it. So it is
13 of no significance in this sense.

14 So now let's turn to things that are of significance,
15 which is where under Section 3553(a) I should sentence this
16 defendant. So let me hear first from Mr. Sorkin, then from
17 Mr. Stavis, then from the government, and then from each of the
18 defendants, if they wish to be heard.

19 MR. STAVIS: Your Honor.

20 THE COURT: Yes.

21 MR. STAVIS: I had raised two factual issues. I don't
22 know if your Honor wishes me to address those.

23 THE COURT: Sure.

24 MR. STAVIS: They are brief.

25 THE COURT: Go ahead.

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1 MR. STAVIS: When I'm speaking to the Court.

2 THE COURT: That will be fine, and if Mr. Sorkin has
3 anything. There were a number of disagreements with particular
4 statements in the PSR. My feeling about most of them is they
5 were not material, but if there are ones that you think are
6 material, certainly you should raise them now.

7 With the ones that I thought were immaterial, I
8 thought I would simply before rendering or issuing the written
9 final judgment, just go through all of those and issue a
10 directive to the Probation Office as to those I thought ought
11 to be corrected, if any, but what I want to hear today are the
12 material ones.

13 MR. SORKIN: May I proceed, your Honor?

14 THE COURT: Yes.

15 MR. SORKIN: Thank you, your Honor.

16 As your Honor well knows, if a man is ever to receive
17 credit for the good he has done and his immediate misconduct
18 assessed in the context of his overall life, now is the time to
19 do it. And I am quoting from a decision that I --

20 THE COURT: Yes, it is a weak authority but one I will
21 accept.

22 MR. SORKIN: But it is the best authority, your Honor,
23 that I could get for today.

24 THE COURT: So let me in that regard say, because I
25 think it is important to state this for the record but then

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1 otherwise not pursue it unless counsel wants to, in the
2 pretrial proceedings the Court became aware of assistance that
3 had been rendered by Mr. al Kassar to one or another
4 government/governments, and I certainly take that to be a
5 mitigating factor.

6 MR. SORKIN: May I address that a little further, your
7 Honor?

8 THE COURT: Sure.

9 MR. SORKIN: I don't mean to suggest that your Honor
10 has taken our thunder away, but I think -- and I don't mean
11 this in a pejorative way to the government -- I thought it was
12 somewhat disingenuous and unfair, fundamentally unfair for the
13 government to take the position publicly of all of the alleged
14 terrible things that Mr. al Kassar allegedly engaged in outside
15 of this case and at the same time taking the position that
16 certain information which, as your Honor correctly said we
17 addressed it pretrial, was never challenged by the government,
18 never alleged to be false, never alleged to be not material
19 and, quite frankly, ignored entirely. Now is the time, and I
20 would say we are not going to go into those areas, for obvious
21 reasons, but your Honor is aware of them.

22 I think your Honor has to weigh that very carefully --
23 I say that respectfully -- because as we put in our sentencing
24 memorandum, Mr. Kassar put himself and his family at grave risk
25 for over two decades in doing certain things, which I think

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1 your Honor certainly is aware of and as your Honor alluded to.

2 I think the paramount issue in this case, your Honor,
3 in addressing whether or not Mr. al Kassar engaged in conduct
4 which he was convicted of -- and while we disagree with the
5 verdict, we have to live with it; we're not here to challenge
6 the verdict, at least in this forum -- is whether or not Mr. al
7 Kassar should be deemed to be a terrorist.

8 I would respectfully submit to this Court that Mr. al
9 Kassar was not convicted of terrorism. As the government said
10 in its summation --

11 THE COURT: Well, let me -- I need to interrupt you --

12 MR. SORKIN: Sure.

13 THE COURT: -- to make sure I understand what you're
14 saying.

15 I do think it is common ground among the parties --
16 and I will, of course, stand corrected if any counsel disagrees
17 with this -- that the primary motivation of the defendants here
18 was to make money.

19 MR. SORKIN: That is correct, your Honor.

20 THE COURT: I think, it's certainly my impression that
21 over the years Mr. al Kassar played many roles and played many
22 angles, and some of them were laudable and some perhaps not so
23 laudable, but the common denominator was to make money.

24 However, that included, because he is in the very
25 unusual business of dealing in major weapons, entering into

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1 arrangements, such as the one he was convicted of here, that
2 would have, as he understood, assisted terrorist activity and
3 led to the prospective deaths of Americans.

4 So I think we have to distinguish between primary
5 motivation, which was to line his pocket, and knowing effects,
6 which, as the jury found and as in this Court's view is
7 overwhelmingly supported by the evidence, that he full well
8 understood that the arrangements in this case, had they been
9 for real rather than a sting, would have resulted in the
10 advancement of the terrorists and the deaths of Americans.

11 So that's the distinction I draw.

12 MR. SORKIN: Your Honor, I would respectfully disagree
13 slightly, I think, materially. I think one cannot ignore the
14 fact that this was a sting operation, that this was an
15 operation concocted by, developed by, instituted by, the United
16 States government through the DEA. There is no in evidence
17 this record, your Honor, anywhere that Mr. al Kassar anywhere
18 in this case, with the evidence that came to trial, ever
19 assisted in any terrorist activities which under the definition
20 as it would apply to other conduct and this case was an
21 offense -- and I'm quoting from the definition under
22 2332b(g)(5) -- an offense, quote, that is calculated to
23 influence or affect the conduct of government by intimidation
24 or coercion or to retaliate against government conduct,
25 unquote.

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1 If your Honor accepts the proposition that Mr. al
2 Kassar entered into this series of conspiracies to line his
3 pockets, the intent was not to engage in a terrorist activity,
4 which I think the statute may be ambiguous on that.

5 THE COURT: I'm distinguishing intent from motive.

6 And what I said was his motive, his primary motive, was to line
7 his pockets.

8 But if you -- to take a hypothetical that's not this
9 case but just to make it an extreme situation: If you possess
10 an atomic bomb and someone comes to you and says I would like
11 to buy your atomic bomb to blow Sweden off the map and you
12 don't say a word but you sell me the atomic bomb, you are just
13 as involved in the murder of all those Swedes as the people who
14 purchased the bomb because you knew darn well what it was going
15 to be used for.

16 MR. SORKIN: I think you have to draw the distinction,
17 with respect to your hypothetical, your Honor, that the person
18 who approached me never had any intention to blow up Sweden,
19 the person who approached me never had any intention to harm
20 anyone because this was a made up story.

21 THE COURT: I understand it is a sting but I don't
22 understand why that helps your client because he didn't know it
23 was a sting.

24 MR. SORKIN: That may be true, your Honor, but if your
25 Honor -- I don't think the statute can be read as an either/or,

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1 either he went into this conspiracy to influence the conduct of
2 the United States government or to retaliate against government
3 conduct, or he went into this conspiracy or series of
4 conspiracies to line his pockets, and I don't think,
5 respectfully, you can have it both ways.

6 THE COURT: I think we're in disagreement on that.

7 But anyway, go ahead.

8 MR. SORKIN: I would suggest to your Honor that that
9 is the case here, and I think it has a dramatic impact, your
10 Honor, not only on the issue of -- and I'll get to that in a
11 moment -- where he is incarcerated for a sentence that will
12 result more likely than not in his dying in jail but also, your
13 Honor, with respect to the forfeiture issue. This --

14 THE COURT: I do want to discuss forfeiture at some
15 length but separately.

16 MR. SORKIN: Surely.

17 THE COURT: We'll take that up after we compose
18 the rest of the sentence.

19 MR. SORKIN: I think, your Honor, by calling this an
20 act of terrorism improperly, as we discussed a little bit
21 earlier, takes this from a Category I criminal history to a
22 Category VI, and I would suggest to your Honor that would be an
23 improper enhancement based upon the facts of this particular
24 case.

25 We've already discussed, your Honor, what I regard as

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1 the piling on of points and the various enhancements, and I do
2 not wish to waste the Court's time, but I would submit to your
3 Honor that in this particular case, that a downward departure
4 on Counts One, Two, Four and Five, which the Court certainly
5 has discretion to exercise, that it do so in this particular
6 case.

7 And I think, your Honor, the downward departure, as
8 your Honor alluded to earlier, is the information that we
9 believe, respectfully -- and, of course, we disagree with the
10 Court -- should have been introduced to the jury but was not,
11 and your Honor ruled that way.

12 I would also suggest, your Honor, that because Mr. al
13 Kassar will more than likely than not, as I just said, die in
14 prison. With a 25-year sentence at the age of 63, the
15 expectation that he is going to walk out of prison at the age
16 of 88 is remote.

17 THE COURT: Well, just so everyone again is on the
18 same wavelength, because I thought about this in preparation
19 for today: While the federal government has done away with
20 parole, it has not done away with good time. So any sentence
21 imposed by a court in any case that's in federal Court really
22 has a 15 percent range because that is the maximum good time.

23 MR. SORKIN: I would suggest, your Honor, that even if
24 he lives past the age of 84, and I haven't done the 15 percent
25 calculation of 80, your Honor, without getting into the life

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1 expectancy of his family, I would still submit that getting out
2 of prison on his own is remote.

3 I would point out to your Honor there is yet another
4 reason, and that is the fact that his immediate family, your
5 Honor, does not reside in the United States. His only relative
6 in the United States is his niece, who resides with her husband
7 in Florida. And this has all been put forth in our sentencing
8 memorandum and I don't want to --

9 THE COURT: Yes, and I have her statement which was I
10 thought very cogent and helpful to the Court.

11 MR. SORKIN: I would say to your Honor that a downward
12 departure based solely upon the information that your Honor had
13 at his disposal, which we litigated and which your Honor ruled
14 on, certainly mitigates for a downward departure and a
15 substantial downward departure with respect to Counts One, Two,
16 Four and Five.

17 THE COURT: Again, I'm not sure this makes a
18 difference, but are you arguing technically for a downward
19 departure under the guidelines, which I don't think would be
20 supported by the argument --

21 MR. SORKIN: No.

22 THE COURT: Or you want a nonguideline sentence that
23 is substantially -- that is as close to 25 years as the Court
24 would come to?

25 MR. SORKIN: I would ask the Court for a

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1 nonguidelines sentence, and as we put in our papers, I think
2 5K2.0 would be the appropriate way to deal with that. I think
3 your Honor can consider that, and I would submit that because
4 of the unusual facts related to that information, it is
5 certainly a matter that the Sentencing Commission, as far as
6 I'm aware of, never considered. So I think 5K2.0 is certainly
7 something that your Honor should consider and --

8 THE COURT: My point is it doesn't really matter
9 because I could consider it in any event under Section 3553(a).

10 MR. SORKIN: That is correct, and I haven't even
11 addressed the 3553(a) matters, your Honor. I don't think I
12 need to. Your Honor is fully familiar with the Booker progeny,
13 Cavera, a recent case in the Second Circuit. We've alluded to
14 it in our papers and I don't think I need waste the Court's
15 time on that.

16 I would also say, your Honor, and it is critically
17 important, as we put in our papers, that your Honor consider,
18 as well, what the Court says with respect to the judgment and
19 commitment order. I think your Honor should take into
20 consideration -- I say this respectfully -- the fact that if --
21 and whatever you rule with respect to the sentence, if your
22 Honor deems it so, based upon the evidence that your Honor saw
23 in this case, that Mr. al Kassar is not a threat to national
24 security, then I would respectfully request that your Honor
25 note that on the judgment and commitment.

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1 I would also respectfully request, your Honor, that
2 Mr. al Kassar be recommended by the Court to the FCI facility
3 in Coleman, or Coleman, which is in Florida. That is where his
4 niece, her husband, their daughter reside. It is the closest
5 he has to any family in the United States, a country he has
6 never visited before. It is his only contact with his wife and
7 four children who reside, study overseas in various countries.
8 And I think if your Honor does, based solely on this case, make
9 the decision that he is not a threat to national security --
10 and we note in our papers, your Honor, that in the 20-odd-plus
11 months that he has been virtually in solitary confinement both
12 in Spain and in the United States, we are unaware of any
13 problem, misconduct, behavioral issue that he is alleged to
14 have engaged in. Now, I'm not going to suggest for the moment
15 that he is the perfect prisoner, but, quite frankly, your
16 Honor, with 23-hours-a-day lockdown where he has been since he
17 came to the United States, I can speak for myself and the
18 people who work with me, we've never had an issue brought to
19 our attention by the MCC that Mr. al Kassar is in any way a
20 problem prisoner or has sought to disobey rules or in some
21 fashion has gone out of his way to at the very least do
22 something far be it below a threat to national security. And I
23 think if your Honor makes note of that on the judgment and
24 commitment, it will play a substantial factor, your Honor, in
25 where Mr. al Kassar is incarcerated, and I ask again that the

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1 Court recommend that he be incarcerated in the FCI Coleman
2 which is in Florida.

3 I know Mr. al Kassar has something to say, your Honor.

4 THE COURT: We are going to turn to the defendants
5 last. I want to cover all the issues before then.

6 MR. SORKIN: Yes. If your Honor has no other
7 questions --

8 THE COURT: Now would be the time. What did you want
9 to say about the forfeiture?

10 MR. SORKIN: Your Honor, I think the forfeiture,
11 issue, your Honor, is tied into whether or not this was an act
12 of terrorism.

13 That section, which is -- I'm always fascinated by the
14 number of sections and subsections and subsections. As we both
15 get on in age, your Honor, it is very difficult to follow any
16 of them without reading them. But 18 U.S.C. 981(a)(1)(G)
17 applies only to federal crimes of terrorism. And as I read the
18 statute -- it is the definition that is taken from 2332b(g)(5).
19 As I read statute, your Honor, there is no forfeiture unless
20 there is an act of terrorism. And I realize your Honor
21 disagrees, but I would also note, your Honor, that if your
22 Honor has any discretion with respect to forfeiture, certainly
23 the money that the government sent to the two or three banks
24 alleged in the Indictment which the government claims it was
25 their money, we have no issue with that. But with respect to

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1 the home in Marbella, which has been the residence of Mr. al
2 Kassar, his wife and four children for as many years as he has
3 been in Spain, which is 25, and his children essentially grew
4 up there and his wife lives there, to the extent your Honor has
5 any discretion, putting aside the statutory definition of
6 terrorism, we would urge your Honor that that not be made a
7 part of the forfeiture.

8 THE COURT: All right. Thank you very much.

9 MR. SORKIN: Thank you, your Honor.

10 THE COURT: Let me hear from Mr. Stavis.

11 MR. STAVIS: Yes, your Honor. I have, on behalf of
12 Mr. Moreno Godoy, there were two minor factual issues that I
13 want to just indicate to the Court what their significance is.

14 THE COURT: Go ahead.

15 MR. STAVIS: The first is that my client is a citizen
16 of Spain. In page 14, paragraph 120 of the PSR, and also I
17 believe on the second part of the cover page, it says,
18 "Citizenship Chile."

19 He was residing in Spain. He was a citizen of Spain.
20 When he was arrested in Romania he had his Spanish passport on
21 him. Now, why is this material, your Honor?

22 THE COURT: Well, paragraph 120 does not take a
23 position; that doesn't mean this Court shouldn't take a
24 position --

25 MR. STAVIS: Yes, I'm urging the Court to do so.

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1 THE COURT: But just so the record is clear, paragraph
2 120 says, "According to ICE, the defendant is a citizen of
3 Chile. He entered the U.S. on October 16, 2007 via
4 extradition. According to defense counsel, the defendant has
5 dual citizenship in Chile and Spain, and the relevant
6 citizenship documents were seized pursuant to a search of the
7 defendant's bedroom."

8 So I guess I didn't see why it matters --

9 MR. STAVIS: Yes. One of the issues that I think we
10 tend to miss here is that Mr. Moreno Godoy is going to be
11 incarcerated for at least 25 years in what is for him a foreign
12 country. That is what's unusual about the case. Although your
13 Honor every day of the week passes sentence on people from
14 other countries, he didn't come here -- he here only through
15 extradition, your Honor.

16 And why it's material where he comes from is if there
17 are certain accommodations that the Spanish government can make
18 for him, if there are certain things that they could try to
19 persuade the Bureau of Prisons on his behalf. Bearing in mind
20 that he is a Spanish citizen and is being incarcerated for what
21 in all likelihood is the rest of his life here in the United
22 States, it was also -- perhaps it's not material, as material
23 as these other issues -- it's very important to Mr. Moreno
24 Godoy, and he stressed this to me when we met on Sunday, that
25 this Court and the Bureau of Prisons know that he is a citizen

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1 of Spain.

2 So I'm asking the Court to make that finding --

3 THE COURT: All right. I'll hear from the government
4 on that.

5 I have already given him, in effect, the benefit of
6 the one and only application the Spanish government made in
7 this case, which is that Mr. al Kassar not be sentenced to
8 death or life in prison, and I've made it because he's on any
9 analysis less culpable than Mr. al Kassar. So he gets that
10 benefit but for a different reason.

11 Go ahead.

12 MR. STAVIS: The second issue was on page 14, in
13 paragraph 52. For some reason, the PSR, inartfully and
14 incorrectly, quoted the trial evidence, "Moreno Godoy stated
15 that al Kassar had buyers for the drugs in Syria."

16 I went back to Government's Exhibit 41T, which was
17 that conversation. I went back to the transcript at page 760.
18 That particular sentence is factually incorrect, and it does --
19 the involvement -- and your Honor will remember, we had some
20 famous sidebars on this. The informants make it clear that
21 they're from the FARC and they grow their own cocaine and they
22 use it to get money, that they use it to buy these arms or
23 weapons.

24 But this paragraph casts a different light on
25 Mr. Moreno Godoy; it is a false light. And that's why we

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1 believed it was material and that's why we asked -- first, we
2 asked the Probation Department. They sort of kicked the can
3 down the road. We're now down the road and that's why we're
4 asking the Court to --

5 THE COURT: I want to hear from the government on
6 this. My recollection is supportive of yours, Mr. Stavis, on
7 this point, but as Mr. Sorkin has so wisely pointed out, when
8 you reach a certain age memories are uncertain so we'll see
9 what the government has to say.

10 MR. STAVIS: Your Honor, while we moved past the
11 guidelines' issues, there is -- one of them was the terrorism
12 enhancement that was requested, which is an additional 12
13 levels and six criminal history categories, and I won't repeat
14 what is in our presentence memorandum. That enhancement has a
15 huge impact on the conditions of confinement. Now, your Honor
16 may wish those conditions of confinement and we're going to
17 know soon enough. But if your Honor doesn't wish those
18 extremely harsh conditions of confinement, I would ask the
19 Court not to apply the terrorism enhancement.

20 Which gets us to the 3553(a) factors, your Honor.

21 Now, 25 years is a long time. Someone waking up from
22 a deep sleep might want to know if Ronald Reagan was reelected.
23 It is a long time. And one of the things that when you come
24 out of law school and go to work for the District Attorney's
25 office, which I did because I wasn't fortunate enough to three

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1 years later work for the U.S. Attorney's office, they used to
2 take us on a tour of Rikers Island because they wanted us to
3 know where we are sending people or where we're asking the
4 Court to send people.

5 Now, I know that your Honor has taken those tours, and
6 I know that your Honor is one of the most active judges on this
7 bench on those issues. And I know from my previous sentences
8 before your Honor that you consider very, very deeply that
9 there is before you a human being. This human being, your
10 Honor, must serve a 25-year sentence. And, your Honor, this
11 human being, I submit to the Court, were it not for the statute
12 that compels you to do that, should not be receiving a 25-year
13 sentence.

14 This is his first offense, your Honor, and I'm not
15 saying his first conviction, with a string of arrests and bad
16 conduct. Even the presentence report shows that he went to
17 live with Mr. al Kassar in 1997, or thereabouts. He was
18 responsible for helping manage the employees and the other
19 things. He also assisted Mr. al Kassar in all his business
20 endeavors. There were a lot of real estate rental apartments,
21 there were investments and various other things.

22 Now, he is a person who is very educated. He has a
23 Master's degree in agronomy. He comes from a very prominent --
24 and it is a little interesting. He comes from a prominent
25 Chilean family where his grandfather -- he was raised with his

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1 mother and grandparents and that grandfather was the President
2 of the Supreme Court of Chile. His uncle was a senator. His
3 cousins are senators. And I know your Honor is somewhat aware
4 of the politics of Chile because the United States was very
5 involved in the politics of Chile at one time.

6 He comes from a, for want of a better word, a somewhat
7 right-wing political family. He is accused here of terrorism
8 on behalf of a left-wing Communist rebel group, the FARC, the
9 F-A-R-C.

10 THE COURT: I need to interrupt you here in the same
11 way that I did with Mr. Sorkin.

12 I assume -- and I haven't heard yet from the
13 government so they may disagree, but I assume that it's common
14 ground among the parties that the primary motivation of
15 Mr. Godoy, just like the primary motivation of Mr. al Kassar,
16 was to make money. In his situation there was the added role
17 of his, in effect, subordinate role to Mr. al Kassar.

18 But one has to distinguish between motive and
19 knowledge and intent. With respect to Mr. Godoy, I think, as
20 with Mr. al Kassar, the evidence was overwhelming that he
21 entered into what he believed was going to be an arrangement to
22 sell vast quantities of very serious weapons to a terrorist
23 organization for, among other things, the purpose of killing
24 Americans.

25 It's one thing to say, well, deep down in his heart he

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1 didn't care, he just wanted to make a buck, or a Euro. It's
2 quite something else to say that he, both as a matter of law
3 and as a matter of common sense, can evade responsibility for
4 what he knows are the consequences of his actions if this had
5 not been a sting.

6 MR. STAVIS: Yes, the distinction is an appropriate
7 one and it is one -- a distinction with knowledge and intent is
8 one that is landing him in the predicament where he is today
9 where no matter what happens he's going to jail for 25 years.
10 So, your Honor, we're arguing over how much more he can go.

11 THE COURT: All right.

12 MR. STAVIS: That is a factor --

13 THE COURT: In that context I understand your
14 argument.

15 MR. STAVIS: That is correct, your Honor.

16 And I might also say that the profit motive is
17 different because Mr. Moreno Godoy is not a business partner of
18 Mr. al Kassar, and Mr. Moreno Godoy would make the same amount
19 of money whether he was just shuttling guests to the home in
20 Marbella, taking care of the servants or going to the local
21 bank.

22 THE COURT: At least tentatively, I think that may
23 well be the case. That is an important point that I want to
24 hear from the government on.

25 MR. STAVIS: Yes.

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1 THE COURT: But I think that is relevant.

2 MR. STAVIS: Your Honor, the government has termed it
3 a, quote, pivotal role and it has termed it a, quote, vital
4 role. I tried the case. The evidence that came out came out.
5 I know exactly what the evidence was at the trial of what
6 Mr. Moreno Godoy did and what he heard when he was sitting in
7 the living room. I'm very much aware of that. I do not think
8 it's accurate to call that a pivotal or vital role, and I think
9 that your Honor should consider that under the 3553(a) factors
10 with regard to this offense.

11 He drove to the bank. He had discussions, frequently
12 even -- even in the presentence memorandum that the government
13 served and filed yesterday, it keeps saying and Moreno Godoy
14 was present for this conversation, and Moreno Godoy was present
15 for that conversation, and Moreno Godoy was present for the
16 other conversation, all of which goes to that distinction where
17 your Honor called the knowledge and intent but not what do we
18 do with him now. What do we do with this human being who was
19 living with his friend in Marbella, Spain, and was helping him
20 and is convicted and must receive a 25-year sentence? Has his
21 life been a complete horror show where we should just wipe out
22 everything and forgot that he is a grandfather and a father,
23 and a good father. And your Honor has received the faxes from
24 two his daughters, Maria Jesus and Maria Paz --

25 THE COURT: Yes. I think they strongly confirm what

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1 you just said about his being a good father.

2 MR. STAVIS: And they were here for their father
3 during the trial. They came. They traveled from Santiago,
4 Chile, and they supported him. He's educated. He has done a
5 lot of things in his life. This is his first offense.

6 And I might point out, your Honor, the 25-year
7 sentence is a minimum sentence. The government has confused a
8 "minimum" sentence with a "minimal" sentence, so that the
9 government has urged this Court that, well, Mr. Moreno Godoy
10 had the knowledge and intent and it was a terrible crime so why
11 should he receive the minimum sentence? Why, your Honor?
12 Because the minimum sentence here is 25 years in prison, and
13 that's a minimum sentence, not a minimal sentence. If the
14 government was arguing against a minimal sentence, they would
15 have a case, your Honor, not when it's 25 years.

16 I would ask the Court, as far as our specific
17 recommendations on behalf of Mr. Godoy, if your Honor believes
18 that a 25-year sentence for a 60-year-old first offender is a
19 very serious, long sentence, then we would ask the Court to
20 sentence for 25 years on Count Three -- that's the missile
21 count, that's the mandatory minimum -- and we had asked the
22 Court to set sentences in accordance with the 3553(a) factors
23 on Counts One, Two, Four and Five.

24 And as I've said in my submission to the Court
25 yesterday, that will -- if your Honor is inclined, and I

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1 believe that your Honor -- I would urge your Honor to be so
2 inclined -- to show that the 25 years is because that is what
3 the statute and the law require. And as I used to hear in the
4 pre-Booker days from courts in this district and others,
5 Mr. Stavis, my hands are tied. Well, this is a case
6 post-Booker where your Honor's hands are tied and that would
7 underscore that.

8 I would ask that there be no terrorism enhancement
9 under Section 3A1.4 because of the consequences of his
10 conditions of confinement.

11 I would ask your Honor -- this is a recommendation --
12 that the judgment and commitment for Mr. Moreno Godoy reflect
13 that he does not present a threat to national security, also
14 going toward the conditions of confinement.

15 And I would ask the Court that Mr. Moreno Godoy -- I
16 would ask the Court for a recommendation -- I know that is it
17 is not binding -- I would ask the Court for a recommendation
18 that Mr. Moreno Godoy be incarcerated at the federal facility
19 at Coleman, Florida, because it has every different security
20 level so whatever they find, he could be there. And, your
21 Honor, at the very end of his youngest daughter's letter to the
22 Court, she asks, "Please try to put him in Miami because from
23 Santiago, almost every flight goes there. It's the cheapest
24 and easiest way. Don't do it for him, do it for a 24-year-old
25 daughter."

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1 So the family is in Santiago, Chile. He would have
2 access to his family. And, again, I'm stressing to the Court
3 Mr. Moreno Godoy is going to spend, under the mandatory
4 minimum, the rest of his life in a prison in a foreign country.
5 So if your Honor could make that recommendation, it would be
6 very much appreciated not only by Mr. Moreno Godoy but by his
7 family as well.

8 One moment, your Honor.

9 THE COURT: Yes.

10 (Pause)

11 THE INTERPRETER: Your Honor, may the Interpreter make
12 a request to the clerk of the Court?

13 (Pause)

14 MR. STAVIS: Thank you, your Honor.

15 THE COURT: All right. Thank you.

16 Let me hear from the government.

17 MR. JOHNSON: Just to begin, your Honor, with respect
18 to the assurances that were given and in connection with the
19 extradition of al Kassar from Spain, the only assurance that
20 was given was that the government would not seek a sentence of
21 life in prison. So --

22 THE COURT: Just to -- I understand that on the one
23 hand, that doesn't bind me. But on the other hand, to me it
24 has always been very important that anything that goes on in my
25 court reflect reality and not legal fictions. So that would be

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1 a hollow assurance if you were now asking, say, for a 100-year
2 sentence. So that's why I framed this in terms of 35 years as
3 the highest; 25 years everyone agrees is the mandatory minimum,
4 because even if these defendants lived to a ripe old age, it is
5 unlikely that they would spend much beyond a 35-year sentence
6 out of prison.

7 So do you disagree with that?

8 MR. JOHNSON: No, I don't disagree with that, your
9 Honor.

10 THE COURT: OK.

11 MR. JOHNSON: I just wanted to be clear with respect
12 to the nature of our assurances but I certainly understand what
13 you are saying.

14 THE COURT: Then we are all on the same wavelength.

15 MR. JOHNSON: With respect to the guidelines range
16 that applies, as your Honor is aware, obviously you do need to
17 find the guidelines in this case --

18 THE COURT: I actually don't but I will. You are
19 actually wrong about that. The Second Circuit has said that
20 where there is a guideline difference between the parties that
21 makes no practical difference, the court is not required to
22 find the guidelines. And I think actually this is such a case.

23 Nevertheless, I do in fact think that the calculation
24 made by the probation officer is the right one and I will adopt
25 that.

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1 MR. JOHNSON: I just have a few points, then, your
2 Honor, to respond to what defense counsel have said.

3 This was a crime of terrorism, and the claim that this
4 offense was somehow not a crime of terrorism simply ignores the
5 evidence and certainly the verdict. From the beginning these
6 defendants knew that the weapons they had agreed to sell were
7 going to the FARC to kill Americans. They were on videotape
8 where they discussed the fact that the informants who were
9 portraying themselves as representing the FARC wanted to use
10 the weapons -- intended to use the weapons to kill Americans in
11 Colombia, to shoot down American helicopters in Colombia.

12 And armed with the knowledge that the FARC was going
13 to use these weapons to kill Americans, Moreno and al Kassar
14 went forward with this deal for months to get it done.

15 Now, with respect to Mr. al Kassar, certainly he was
16 looking for money, but your Honor will recall, the first thing
17 that he asked the informants when he was in his living room in
18 his mansion in Spain was whether they were for or against the
19 U.S. He wanted to --

20 THE COURT: I don't draw the same inference. I
21 remember that testimony, but my own view of it was -- and this
22 was not necessarily the jury's view but for purposes of
23 sentencing I have to give my own view -- that Mr. al Kassar
24 wanted to test out his prospective purchasers as to what view
25 he should adopt. I'm not sure that we'll ever know deep down

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1 in his heart -- and I'm not sure it is relevant -- deep down in
2 his heart whether he was right-wing, left-wing, pro-American,
3 anti-American, etc., because for the reasons you've already
4 stated, and the Court has already stated, there is no doubt
5 what he intended in this case, as the videotapes show.

6 But I'm not sure that all his interplay was of a form,
7 as you would interpret it, "Well, I'm not going to sell to you
8 if you're pro-American." I think it was more, "I want to
9 figure, out as a shrewd seller of arms, where your head is at
10 so I can adjust to it in my sales pitch."

11 I mean, Mr. al Kassar is a very sophisticated person,
12 a very complicated person. It is a tragedy that a person of
13 his intelligence has spent so much of his life in activities
14 that certainly were not calculated to advance the human race.
15 But I am reminded a little bit -- this is an imperfect analogy,
16 but I'm reminded a little bit about a figure from the past,
17 Jackie Presser, who probably no one in this courtroom except me
18 remembers, who was the head of the Teamsters. Jackie Presser
19 was a made member of the mob. He was also a government
20 informant. He was also a high-level teamster official, and he
21 was a master of playing everyone off everyone else because his
22 sole real intent was to further the interests of Jackie
23 Presser.

24 He convinced the mob that he was totally on their
25 side. He convinced the FBI he was totally on their side. He

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1 convinced the Teamsters he was totally on their side. And he
2 was lying to every last one of them.

3 Now, as I say, the analogy is inept, but I think it is
4 fair to say that Mr. al Kassar is a man of many faces.

5 MR. JOHNSON: I would agree with that, your Honor.
6 But just to highlight the evidence, which obviously should
7 control here, he did offer a thousand of his men, experts, to
8 show the FARC how to use explosives in Colombia and he offered
9 access to camps in his country where the FARC can be trained in
10 their war against the United States. There is nothing
11 ambiguous or unclear at that point about what his intent was,
12 but certainly I agree that one of the motivations here for both
13 the defendants was greed.

14 We also think that al Kassar was and remains a threat
15 to the national security of this country, with his nearly
16 limitless wealth via the connections that he had to arms
17 companies, who he was able to use to get access to massive
18 amounts of arms, and the willingness that he demonstrated in
19 this case to make those arms available to groups he knew were
20 plotting to kill Americans.

21 Now, he posed a threat to the national security of the
22 this country when he was engaged in that conduct that we laid
23 out in this courtroom, and he remains, because of his
24 connections, because of the power that he wields and because of
25 the wealth that he demonstrated to use those things to harm the

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1 United States and its interests, a threat to the national
2 security of this country.

3 One thing that was highlighted is the history or the
4 background of these two defendants, the fact that they are
5 highly educated, that their families were ones of influence,
6 that they had money and security, it appears, when they grew
7 up. We submit that these defendants are different from a
8 number of defendants who appear in this courtroom for
9 sentencing, who are defendants who don't have the same
10 opportunities, who don't have the same sort of support to make
11 the choices to follow the law, and here we have two defendants
12 who, with all the opportunities in the world to lead lives that
13 abided the law, made the choices that led them to this
14 courtroom here today.

15 Finally, the suggestion that because this case
16 involved an undercover operation on the part of the DEA and
17 that no Americans actually were at risk somehow merits a
18 reduction in the sentences that should be imposed frankly is
19 absurd.

20 The U.S. government and the DEA shouldn't have to wait
21 until Americans are harmed to identify a threat, to investigate
22 the threat, and to ensure that the harm will not be done.
23 That's exactly what occurred in this case. The DEA identified
24 al Kassar and Moreno ultimately as a threat to the national
25 security of this country. They investigated the threat. They

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1 developed an extensive amount of --

2 THE COURT: I agree with all of that but I think you
3 are pushing it too far. Every legal system, for example,
4 distinguishes between murder and attempted murder, even though
5 often the only reason an attempted murder doesn't become an
6 actual murder is because the attempted murder is caught -- the
7 scheme is foiled before it gets to the point of final fruition.
8 So I think it is relevant that no one was harmed because it
9 happened to be a sting, but that doesn't take away with the
10 part that I agree with you, which is that as far as these
11 defendants were concerned, they believed there would be all
12 sorts of extraordinarily awful harm that would result from
13 their sale of these weapons.

14 So let me ask you, though, one minor question and one
15 more major question.

16 The minor question is: What about Mr. Stavis' issue
17 about paragraph 52 of his report, Mr. Godoy's report -- I think
18 actually it is the same on both reports -- where it stated that
19 Mr. Godoy stated that Mr. Kassar had buyers for the drugs in
20 Syria? I don't really recall that.

21 MR. JOHNSON: We agree, your Honor, that is not
22 supported by the evidence at trial.

23 THE COURT: So I will -- I am going to issue an order,
24 anyway, as I mentioned earlier, going through a lot of the more
25 nitty-gritty kinds of things that were raised about the report

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1 and I will certainly include the striking of that allegation.

2 MR. JOHNSON: We also have no reason to dispute that
3 Moreno Godoy is a citizen of Spain.

4 THE COURT: OK. Fine. We will correct that as well.

5 Now, the bigger question I have is: There was
6 evidence presented by the defense of alleged services that Mr.
7 al Kassar performed for one or more governments. Now, I don't
8 know that the government -- the defense says that the
9 government did not contest those. I think a more accurate
10 statement, as I recall, is that the government took the
11 position, which the Court agreed with, that what was sought to
12 be presented should be excluded because it was not only totally
13 irrelevant to the issues being put before the jury but was
14 potentially a source of confusion, prejudice to the government,
15 a waste of the resources, a total smokescreen in terms of the
16 issues that were to be presented to the jury. But now we're at
17 sentence and the Court can and does indeed wish to take account
18 of the entire life history of these defendants.

19 So what is the government's view as to the assistance,
20 or not, that was allegedly rendered by Mr. al Kassar?

21 MR. JOHNSON: Well, a few points, your Honor.

22 First, I agree that the main objection at trial was as
23 to the relevance of the proffered information.

24 Second, we decline to take a position with respect to
25 confirming or denying any of the proffers that were made with

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1 respect to this issue.

2 Third, at this point I think your Honor is entitled to
3 take into account the histories and characteristics of the
4 defendants in total, and --

5 THE COURT: But you see, here is the point I have. He
6 was accused, very seriously accused, of playing a major role in
7 the Achille Lauro incident, but I have not chosen to take that
8 into account because, number one, he was acquitted, and, number
9 two, the parties dispute vigorously what his role was there and
10 I don't think it would be profitable for this Court to hold a
11 Fatico hearing on that issue.

12 Mr. Sorkin is saying that with respect to the positive
13 information, because the government's position was they will
14 neither affirm nor deny, that he should get the entitlement of
15 that information because it is not disputed. The government is
16 essentially choosing not to take a position on the accuracy of
17 that information. He says that's fine, but that means it is
18 not disputed so he should get the benefit. And I think he may
19 be right if the government is not prepared to dispute that
20 information.

21 MR. JOHNSON: Well, just to round out the issue, I
22 mean, there was evidence at trial -- in fact, the defense at
23 trial was that al Kassar was working as an informant as a part
24 of this investigation --

25 MR. SORKIN: No, no.

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1 DEFENDANT al KASSAR: No, no.

2 THE COURT: Gentlemen, excuse me. This is a court of
3 law.

4 Go ahead.

5 MR. JOHNSON: That he was providing information to
6 authorities in Spain, whose depositions we took the week before
7 the trial, and that as a result of that he lacked the intent to
8 commit the conspiracies that were charged. That obviously was
9 an issue at trial. The jury did not take very long to reject
10 that defense. But the point is in this case, as I point out in
11 our papers, Monzer al Kassar used the relationship that he had
12 with Spanish intelligence to protect himself and to protect his
13 criminal activities, and that was the verdict in this case.

14 So I think that is important to take into account in
15 terms of assessing this issue.

16 THE COURT: All right.

17 MR. SORKIN: May I make three points, your Honor?

18 THE COURT: Yes. Is there anything else the
19 government wanted to address?

20 MR. JOHNSON: No. I could address forfeiture issues
21 but if you want --

22 THE COURT: Yes, I do want to address the forfeiture
23 issues and then I will hear from the defense.

24 MR. JOHNSON: We submitted an Order of Forfeiture --

25 THE COURT: Yes. By the way, I got a request from the

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1 press for the letter that you submitted in support of the
2 forfeiture, and I didn't see anything indicating that you were
3 seeking to seal that in any way. So --

4 MR. JOHNSON: We are not, your Honor.

5 THE COURT: OK. So that will be made available to the
6 press.

7 So go ahead.

8 MR. JOHNSON: The statute that applies here with
9 respect to forfeiture is clear. For the reasons that we've
10 articulated -- and it appears that your Honor, in agreeing with
11 the guidelines' calculation in the presentence report, has
12 agreed with -- is that this is a crime of terrorism and, as a
13 result, that Congress has mandated that the defendant forfeit
14 his right to all assets whether they be foreign or domestic.

15 In addition, we've asked for the forfeiture of the
16 assets that were involved in the crimes of terrorism,
17 specifically the mansion and the handful of accounts that --

18 THE COURT: The defense raises the question -- they
19 are not challenging the accounts. They are challenging --
20 putting aside the legal challenge, they are raising, if you
21 will, the equitable question of, assuming I have discretion as
22 to the forfeiture, whether the forfeiture of the house should
23 be foregone because it is not clearly going to be occupied by
24 Mr. al Kassar but it will be occupied by his family.

25 MR. JOHNSON: That is addressed, respectfully, in the

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1 rule that applies. Your Honor is empowered -- in fact,
2 required -- to order the forfeiture of the assets that were
3 involved in the offense without regard for the interests of
4 anyone else in those assets. It sounds to me like the defense,
5 and appropriately, is concerned that Mr. al Kassar's wife and
6 members of his family may have an interest with respect to that
7 asset. Certainly, it would be appropriate for them to come
8 before --

9 THE COURT: I understand that. Sure, you are
10 absolutely right in your reading of the law. They have a right
11 if they have a legal interest in that asset to make their own
12 application to the Court and I will certainly hear about that,
13 but what I understood Mr. Sorkin to be saying is that Mr. al
14 Kassar owned the home but that there was a humanistic interest
15 in not forfeiting it because it is really the place of abode of
16 the wife and children.

17 MR. JOHNSON: It was clear at trial that the mansion
18 was the headquarters of the arms trafficking organization that
19 al Kassar led. I took a number of hours, much to the chagrin
20 of the Court, to go through all the documents in the search
21 that were recovered inside that house, but it showed that all
22 the operations of this arms trafficking organization were based
23 in that house in Marbella. Cell phones were all over the
24 house. The fax machine was in the house. This was where al
25 Kassar operated from to run his international enterprise. So

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1 there was also evidence at trial of the number of other
2 apartments that al Kassar controlled in Marbella --

3 THE COURT: Also, I think it is fair to say, if I
4 remember correctly, the children were all well educated, they
5 are certainly highly employable. It is not as if they are
6 without the means of sheltering themselves, so to speak.

7 MR. JOHNSON: The PSR also indicates, I believe, that
8 none of the family members are residing in the mansion. That
9 may change and that may be inaccurate --

10 THE COURT: The one who testified indicated that she
11 was only there now and then.

12 MR. JOHNSON: That is correct, your Honor.

13 THE COURT: All right. Thank you very much.

14 Let me hear from defense counsel and then we'll hear
15 from the defendants.

16 MR. SORKIN: Your Honor, I have just a couple of
17 points.

18 I think with respect to the issue of threat to
19 national security, it is my understanding, your Honor, that the
20 threat has to be from prison. If he was out on the street,
21 your Honor, the government's argument would carry some weight,
22 but the threat has to be "when incarcerated." As I understand
23 the law and the Bureau of Prisons' rules, he has to be in
24 prison and while in prison a threat to national security.

25 That's point number one.

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1 Point number two, your Honor. I heard Mr. Johnson
2 just say that there was evidence that there was a threat from
3 Mr. al Kassar that American lives were in jeopardy and that's
4 why the DEA commenced the sting. Your Honor, I saw nothing in
5 the government's papers that they submitted to the Court with
6 respect to the sentencing, nothing in the Indictment, except
7 broad allegations that he was an arms dealer and sold to
8 alleged terrorist organizations, I saw nothing anywhere in this
9 case in any evidence that he was a threat and that's why the
10 sting was commenced. So I take serious issue with what
11 Mr. Johnson said.

12 Third, your Honor, I think, again, it's a bit
13 disingenuous for the government to say they take no position
14 with respect to that information. They did take the position
15 and the position was that it was classified. There was nothing
16 with respect to we don't deny, we don't admit, we don't have
17 any contact with him, we don't want to discuss. They took the
18 position, your Honor, that it was classified. If it was not
19 true and inaccurate and a fiction, then why was it classified?
20 OK? So I really takes issue with that point.

21 The last point I want to raise, your Honor, is that --
22 two points, I'm sorry.

23 THE COURT: I just want to note for the record, not
24 that I disagree with the point that they took a position that
25 it was classified, that was one of two positions they took.

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1 The other was that it was irrelevant, and it was on the grounds
2 of irrelevancy that I ruled it out.

3 MR. SORKIN: That is correct, your Honor. The point I
4 want to make --

5 THE COURT: No, I understand the point you are making.
6 I just want to make it clear --

7 MR. SORKIN: We took issue. We argued the point.
8 Your Honor ruled against us, but at no time in any discussion
9 with the Court, putting aside the relevance issue, was there
10 any suggestion, inference by the government that the
11 information which they deemed classified was a fiction and was
12 fantasy. None of that. They took elaborate steps, your Honor,
13 to make sure it stayed classified.

14 The third point I want to make, your Honor, is -- and
15 I say this just so it is clear because Mr. al Kassar feels very
16 strongly about this: He was not an informant, and I think the
17 information which the government deemed classified will show
18 that he was not merely an informant.

19 Lastly, your Honor, as I understand forfeiture under
20 981, unlike restitution, it is not mandatory, and the Court
21 does have some discretion with respect to forfeitable assets.

22 Thank you, your Honor.

23 THE COURT: Thank you.

24 MR. STAVIS: Your Honor.

25 THE COURT: Yes.

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1 MR. STAVIS: Very briefly, because you mentioned to
2 Mr. Johnson that you are going to adopt the calculation of the
3 probation report, the Probation Department --

4 THE COURT: Yes, and, therefore, I am disagreeing with
5 you on the terrorism enhancement. I do have some other thing
6 to say on that issue which I will say when we get to
7 sentencing --

8 MR. STAVIS: Yes. But I just wanted to remind your
9 Honor that that would encompass, if your Honor does that, the
10 terrorism enhancement.

11 THE COURT: I was consciously aware of that,
12 Mr. Stavis. Thank you.

13 So let me hear from each of the defendants, if they
14 wish to be heard.

15 DEFENDANT al KASSAR: Good afternoon, your Honor, and
16 thank you and the court for giving me this opportunity to
17 speak. I am going to be very short statement.

18 Before I start my statement, I want to just, because
19 I've noted there is some reporters here and some interesting
20 people: I'm not an informer. It's just absolutely lies. I'm
21 not an informer.

22 Now, of course, in all religions from God demand
23 justice. In the Torah, they say justice, justice and justice
24 above all. The Jesus Christ said justice is the salt of the
25 earth. If we lose it, what's left? And the Holy Koran said if

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1 you judge people, judge them correctly and fairly.

2 Of course, I'll summarize my case in two lines from an
3 old Arabic poet. Maybe it will lose the meaning but I'll try
4 to translate it as much as I can. They said that throw him in
5 the water in the mad sea handcuffed and told him be careful to
6 be wet. This is my case.

7 Now, with all my respect to the Court and to the
8 jurors, and I think some of them are here listening, if they
9 had been allowed or seen the classified information which this
10 Court sealed, which is in the possession of the government and
11 the court, which will prove what goes back to 20 years ago, it
12 proves without any doubt I have saved lots of human lives,
13 including American, and soldiers. And it proves without any
14 doubt I have no intent for animosity against America or against
15 any other nation. I think also it proves more than that, if we
16 had been allowed to use it. And if the jury had seen this
17 classified information, I'm sure they would have come with a
18 different verdict.

19 Finally, I would like to thank my family -- my niece
20 is here -- and my lawyers for their support and belief in my
21 innocence -- in our innocence.

22 Nothing left to say but I've heard it so many times
23 that justice sometimes goes slow but sure.

24 Thank you, your Honor.

25 THE COURT: Thank you.

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1 And now from Mr. Godoy.

2 DEFENDANT GODOY: Thank you, your Honor, for the
3 opportunity you give me to address the Court.

4 I am innocent and my conscience is at peace except
5 that I don't understand what, why the American government has
6 proved distrust against me. I am a person who hates terrorism.
7 I am a person who respects any constitution and order and the
8 fundamental rights of all the governments, although they are
9 generally from the right-wing. I am a person with mere
10 conservative ideas and I come from a family with the same kind
11 of thinking.

12 My grandfather, who raised me and with whom I lived
13 throughout my youth, was a judge of the Supreme Court for
14 decades, and my cousins and my uncles have been and continue to
15 be senators and congressmen from right-wing parties.

16 I remember years ago that me and my family got
17 traumatized because of an attack with a terrorist bomb that
18 caused injuries to my small daughters in Santiago, in Chile. I
19 remember helping the intelligence services in Spain in many
20 opportunities, giving them very important information to fight
21 and to combat against terrorism, information that even helped
22 the United States a lot in many opportunities.

23 My family and friends cannot understand how a person
24 like me who hates terrorism so much can be accused and
25 condemned of helping left-wing groups that just want to sow

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1 chaos and destruction.

2 Lastly, I want to thank my family in these moments for
3 keeping me company and also to thank my attorneys because they
4 believed in my innocence.

5 Thank you, your Honor.

6 THE COURT: Thank you.

7 Well, I listened carefully to the very articulate
8 statements of the defendants, and of course I have been
9 privileged throughout this trial to have the benefit of the
10 excellent representation of the defendants by their very
11 outstanding lawyers, and they make many points that are worthy
12 of consideration.

13 But one cannot ignore, first, the totally overwhelming
14 nature of the proof in this case, vast amounts of which were
15 videotaped. We don't have to speculate about what agreements
16 these two defendants entered into because it was there on
17 tape -- their voices, what was being said to them, what they
18 were agreeing to, and not just once but over a period of
19 months. I was blessed and the system of justice was blessed by
20 the wonderful jury we had in this case, but it would have been
21 totally irrational for them to come to any verdict other than
22 the one they did.

23 And the notion that the information that related to
24 alleged good deeds that Mr. al Kassar had done in other
25 circumstances would have dissuaded the jury from finding the

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1 facts on this case is, in my view, a defamation of the jury.
2 The Court, in its view, had no choice under the law but to keep
3 out that evidence because it was so plainly irrelevant. And
4 had it been admitted for the jury to be in any way, shape or
5 form affected by it would have been a denial of their duty.

6 And what the evidence showed was that the two
7 defendants here, knowingly and intentionally, and without any
8 hesitation, and with their full embrace, entered into an
9 arrangement to sell huge quantities of the most serious weapons
10 to what they believed was a terrorist organization who would
11 use those weapons, among other things, to kill Americans and to
12 wreak havoc.

13 So the crimes of which they stand convicted are, in
14 this Court's view, properly considered terrorist crimes and
15 they are crimes of the utmost seriousness.

16 It is important, however, when one is imposing
17 sentence to take account of the entire picture, not only the
18 crimes before the Court. And I put first and foremost giving
19 full recognition to the request of the government of Spain that
20 the government not seek a life sentence, but I take that to be
21 implicitly a request to this Court to exercise its discretion
22 not to impose a life sentence.

23 And it's interesting where that request was based.
24 The request with respect to the death penalty is more or less
25 standard from countries that disapprove of the death penalty

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1 and, therefore, will only extradite if no death penalty will be
2 requested by the government, and the one against life
3 imprisonment is not unheard of either. This is not the only
4 such case. But it's interesting because, as the testimony that
5 the defense themselves sought from the two Spanish intelligence
6 officers and that was presented fully to the jury showed, Mr.
7 al Kassar, among other things, deceived the Spanish authorities
8 about the deal that we're considering here. But I think it is
9 fair to say that in other contexts he performed services for
10 the Spanish government, and others, and that that has to be
11 weighed in the balance.

12 So as a matter of comity to the Spanish government, I
13 will not impose in this case a sentence greater than 35 years.

14 And when I take account of all the factors under
15 Section 3553(a), but most especially the services I just
16 mentioned, and the Court's own conclusion that the ultimate
17 primary motive here, though it by no means excuses the
18 knowledge and intent, was a monetary motive, the Court
19 concludes that the proper sentence for Mr. al Kassar is 30
20 years.

21 So the sentence of the Court is that the defendant is
22 sentenced to 30 years on Counts One, Two and Three. The
23 maximum on Count Four is 15 years, so it will be 15 years on
24 Count Four. The maximum on Count Five is 20 years, so it will
25 be 20 years on Count Five, all terms to run concurrently.

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1 I will not impose a fine because I am going to impose
2 the forfeiture. I leave open if the family does have an
3 interest in the asset, they of course can make their own
4 application in that regard. But for now the Forfeiture Order
5 as presented will be signed.

6 There is a special assessment of \$500 that must be
7 paid.

8 There will be imposed to follow any imprisonment a
9 total of five years of supervised release on Counts One, Two
10 and Three, to run concurrently with each other and concurrently
11 with three years of supervised release on Counts Four and Five.

12 The terms of supervised release are the mandatory
13 conditions:

14 The defendant shall not commit any other federal,
15 state or local crime; that the defendant shall not illegally
16 possess a controlled substance; that the defendant shall not
17 possess a firearm or destructive device; and that the defendant
18 shall cooperate in the collection of DNA.

19 The mandatory drug testing condition is suspended
20 based on the Court's determination that the defendant poses a
21 low risk of future substance abuse.

22 There will also be imposed the standard conditions of
23 supervision 1 through 13. They appear on the face of the
24 judgment and will be gone over with the defendant by the
25 Probation Office when he appears to begin supervised release.

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1 And, finally, there are the special conditions that
2 the defendant will provide the probation officer with access to
3 any requested financial information; second, that the defendant
4 shall obey the immigration laws and comply with the directives
5 of the immigration authorities; and, third, that upon his
6 release from prison, the defendant will report to the nearest
7 Probation Office and he will be supervised by the district of
8 his residence.

9 Before I turn to Mr. Godoy, let me say with respect to
10 the request for recommendations, I reluctantly do not believe
11 that I can make the finding that the defendant is not a threat
12 to national security. My reluctance comes not from any belief
13 that he is not a threat to national security but from the
14 consequences of not making that finding that may affect how he
15 fares in prison. But I think the evidence with respect to Mr.
16 al Kassar is that he has a far-flung network that, as was shown
17 by the facts of this case, has the potential even while he is
18 in prison to be utilized for purposes that could constitute a
19 threat to national security.

20 I am prepared to recommend that he be imprisoned in
21 Coleman on the representation, which I have not independently
22 checked, that it has all levels of security. So given that
23 representation, I will recommend Coleman.

24 I am sure, Mr. Sorkin, you have told your client I
25 can't order that.

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1 MR. SORKIN: Yes, your Honor.

2 THE COURT: But I will recommend it.

3 All right. Before we turn to Mr. Godoy -- my
4 courtroom deputy just said he checked. It does appear it has
5 low, medium, and high security.

6 MR. SORKIN: Yes, I was going to represent to the
7 Court, as an officer of the court, that that is our
8 understanding, your Honor.

9 THE COURT: OK. Before I turn to Mr. Godoy's
10 sentence, and we'll get at the very end to the question of
11 advising the defendants of their right to appeal, but is there
12 anything else with respect to Mr. al Kassar's sentence that we
13 need take up now?

14 MR. JOHNSON: No, your Honor.

15 THE COURT: OK. Anything further from defense
16 counsel?

17 MR. SORKIN: Your Honor, I realize your Honor cannot
18 make a judgment that he is or is not a threat to national
19 security, but I've heard nothing from the government today, nor
20 since he was extradited from Spain, nor from the prison
21 authorities at the MCC that he is in fact a threat to national
22 security or would be so from prison. And I think in the
23 absence of any of that information, would your Honor
24 consider -- perhaps your Honor does not have to decide today,
25 consider it before the judgment and commitment order is

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1 entered -- as to whether or not your Honor would say that based
2 upon what you have seen since you were assigned to this case,
3 the lack of representation by the government, nothing from the
4 MCC, that based solely on that, that will be the only thing
5 that your Honor could do.

6 THE COURT: I'm basing it on what I just said, what
7 has emerged from the evidence of the case. My understanding --
8 the government can correct me if I am wrong -- is that Mr. al
9 Kassar has not done anything improper while he has been in
10 prison. But of course, one has to factor into that the fact
11 that he has been held in solitary.

12 But let me find out if the government disagrees with
13 me.

14 MR. JOHNSON: We don't, your Honor.

15 THE COURT: OK. So you have that statement on the
16 record, if that is of better use to you, Mr. Sorkin.

17 Let me turn to Mr. Godoy.

18 I think I will not burden the record with repeating
19 all that I said about the serious and, but for the fact that it
20 was a sting, potentially catastrophic nature of the crimes that
21 were committed here, but I think it's also important to
22 distinguish between Mr. al Kassar and Mr. Godoy. Now, Mr. al
23 Kassar got certain benefits because of his services and that's
24 why I reduced his sentence from potentially 35 to 30, but even
25 so, I think it is important that the sentences reflect the

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1 difference in the culpability between those.

2 Mr. Godoy was an important contributor to the
3 conspiracies here, and I do not share the defense view of his
4 minor role or anything like that. But I do think he was less
5 culpable than Mr. al Kassar. It was Mr. al Kassar who was the
6 major doer. So I am going to impose a 25-year sentence on
7 Mr. Godoy.

8 So the sentence of the Court is that the defendant,
9 Mr. Godoy, is sentenced to 25 years on Counts One, Two and
10 Three, to run concurrently; again, the maximum on Count Four,
11 15 years; and the maximum on Count Five, 20 years -- all those
12 terms to run concurrently -- to be followed by five years of
13 supervised release on Counts One, Two and Three and three years
14 of supervised release on Counts Four and Five, again all to run
15 concurrently.

16 No fine will be imposed even though here there is no
17 forfeiture being presented to the Court, but the Probation
18 Officer, after taking into account I think all the relevant
19 factors, in particular the fact that this defendant did not, if
20 at all, seeming at least enjoy anything like the wealth of Mr.
21 al Kassar and he obviously won't be in a position to have any
22 earning power in the future, recommends that no fine be
23 imposed, and I will in this respect follow the recommendation
24 of the probation officer. There is, however, a special
25 assessment of \$500 that is mandatory and must be paid.

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1 The terms of supervised release are, first, the
2 mandatory conditions that the defendant shall not commit any
3 other federal, state or local crime; that the defendant shall
4 not illegally possess a controlled substance; that the
5 defendant shall not possess a firearm or a destructive device;
6 and that the defendant shall cooperate in the collection of
7 DNA. The fifth mandatory condition, the drug testing
8 condition, is suspended based on the Court's determination that
9 the defendant poses a low risk of future substance abuse.

10 There will also be imposed the standard conditions of
11 supervision 1 through 13. They appear on the face of the
12 judgment and will be gone over with the defendant by the
13 Probation Office when he reports to begin his supervised
14 release.

15 And finally, there are the special conditions. First,
16 that the defendant shall provide the Probation Office with
17 access to any requested financial information; second, that he
18 shall obey the immigration laws and comply with the directives
19 of the immigration authorities; and, thirdly, that the
20 defendant upon his release from prison will report to the
21 nearest Probation Office to begin his period of supervised
22 release, and he will be supervised by the district of his
23 residence.

24 I will also recommend, though I cannot order, but
25 recommend his incarceration in Coleman.

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1 With respect to the request that I make a finding that
2 he is not a threat to national security, while it is perhaps a
3 closer case, I decline to make that finding.

4 The point is, as the evidence so clearly showed, these
5 two gentlemen have an operation that is virtually worldwide
6 that involved Romania, that involved various countries in South
7 America, that involved Spain, that involved operatives in many
8 locales. And while they may be in prison, it does not follow
9 that they will be so totally incommunicado with their
10 operatives that they don't present a threat to national
11 security. So I decline to make that finding.

12 Again, is there anything, before I advise the
13 defendants of their right of appeal, anything further on
14 Mr. Godoy's sentence? Anything from the government?

15 MR. JOHNSON: No, your Honor.

16 THE COURT: Anything from the defense?

17 MR. STAVIS: No, your Honor.

18 THE COURT: Mr. al Kassar, you have a right to appeal
19 your conviction and this sentence. Do you understand that?

20 DEFENDANT al KASSAR: Yes, I do.

21 THE COURT: If you can't afford counsel for the appeal
22 at any time, the Court will appoint one for you free of charge;
23 do you understand that?

24 DEFENDANT al KASSAR: Yes.

25 THE COURT: Mr. Godoy, you have a right to appeal the

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1 judgment of the jury and also the sentence; do you understand
2 that?

3 DEFENDANT GODOY: Yes.

4 THE COURT: And if you can't afford counsel for any
5 such appeal, the Court will appoint one for you free of charge;
6 do you understand that?

7 DEFENDANT GODOY: Yes.

8 THE COURT: All right. Court stands adjourned.

9 THE CLERK: All rise.

10 MR. JOHNSON: Your Honor, I'm sorry, just one
11 housekeeping matter.

12 We move to dismiss the underlying indictments as to
13 both defendants.

14 THE COURT: Yes. Thank you very much. That
15 application is granted.

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